

Court No. - 17

Case :- WRIT - A No. - 5211 of 2023

Petitioner :- Sadashiv Gupta

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education, Lucknow And 4 Others

Counsel for Petitioner :- Vivekanand Misra, Awadhesh Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard Mr. Vivekanand Misra, learned counsel for petitioner and learned State Counsel for opposite parties 1 to 3. Although notices had earlier been issued to opposite party no.5 on 21.07.2023 but the unserved envelope has been received back although no-one has put in appearance on behalf of said opposite party. However, since the order impugned has been passed by a Committee headed by District Inspector of Schools, notices to opposite parties 4 and 5 stand dispensed with.

2. Petition has been filed challenging order/Minutes of Meeting dated 07.02.2022 whereby petitioner's claim for compassionate appointment in lieu of services rendered by petitioner's father late Gopal Krishna Gupta has been rejected primarily on ground that the deceased employee was not confirmed or substantively appointed and in fact continued upto the date of his demise as an adhoc Teacher in the Intermediate College concerned.

3. It has been submitted that petitioner's late father had been appointed in the School in question on 28.01.1995 on a substantive vacancy on ad hoc basis whereafter he passed away on 11.09.2018 while in service whereafter an application dated 01.02.2019 was filed by petitioner for compassionate appointment which has been rejected by means of impugned order.

4. It has been submitted that a perusal of impugned order will

make it evident that it has been admitted by opposite parties that a vacancy on the post of Teacher had occurred substantively on 30.06.1993 in the institution in question in which petitioner's father was appointed on ad hoc basis on 02.07.1993 whereafter approval was also accorded on 22.01.1995 and approval for salary payment was also accorded on 19.01.1994. It is submitted that the order also admits that issue with regard to regularization in service of the deceased employee is pending consideration before the Joint Director of Education, 4th Division, Prayagraj.

5. Learned counsel for petitioner has placed reliance on a judgment rendered by a coordinate Bench of this Court in **Neeraj Kumar Singh v. State of U.P. and another** [Writ Petition No.27553 (S/S) 2018], which was allowed by means of order dated 19.07.2019 holding that rejection of consideration for compassionate appointment cannot be permitted on ground that the deceased was a temporary employee for a period of 33 years. It has been held that it is the responsibility of the employer to ensure that such temporarily appointed employees should either be confirmed and made permanent or their services should be dispensed with within a reasonable time.

6. He has also placed reliance on a Division Bench judgment rendered by this Court in **State of U.P. & others v. Kuldeep Thakur**, Special Appeal Defective No.89 of 2017 as well as judgment rendered by a coordinate Bench of this court in **Smt. Preeti Sharma versus State of U.P. and others Writ-A No. 11612 of 2017** to buttress his submissions.

7. Learned counsel appearing on behalf of opposite parties has refuted the submissions advanced by learned counsel for petitioner with submission that the aspect of compassionate appointment is covered in terms of Regulation 103 of the

Regulations framed under the Intermediate Education Act, 1921 and has to be strictly adhered to. It is further submitted that admittedly petitioner's deceased father continued on ad hoc basis without any regularization and therefore cannot be deemed to be a substantively appointed Teacher inhering any right of compassionate appointment to petitioner.

8. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident from a perusal of impugned order itself that admittedly petitioner's late father had been appointed on ad hoc basis on 02.07.1993 on a substantive vacancy occurring on 30.06.1993. The order also indicates that the aspect of his regularization was under active consideration as on the date of his demise.

9. In view of aforesaid admitted facts, it is evident that petitioner's late father was entitled to be considered for regularization in terms of Section 33G(1)(b) of U.P. Secondary Education Services Selection Board Act, 1982 under which provision his name was under active consideration for regularization. It is also evident from the record that petitioner's late father had rendered more than 25 years of service as a Teacher in the institution concerned on ad hoc basis.

10. In **Neeraj Kumar Singh** (supra), it has been clearly held that it is the responsibility of the employer to ensure that temporarily appointed employees should either be confirmed and made permanent or their services should be dispensed with within a reasonable time but the stand of depriving the family members for compassionate appointment on aforesaid ground of his being a temporary employee for a period of 33 years is harsh and unreasonable.

11. In **State of U.P. & others v. Kuldeep Thakur**(supra), the

following has been held:-

"The consideration of the right of being regularized by operation of law while in force had already accrued in favour of the father of the respondent petitioner, and his death in between further gave rise to the expected consequential claim of compassionate appointment of the petitioner, provided his father's services were declared regular. The consideration of such right, whether had accrued, does not get eclipsed nor could it be abandoned. If the consideration results in the services of the petitioner's father becoming regular, then the Full Bench judgment in the case of Pawan Kumar Yadav (supra) would not be an impediment for the respondent petitioner to be considered for compassionate appointment. The appellant State and its authorities therefore cannot escape this exercise and defeat the right of consideration by their inaction or the absence of timely and prompt action. Such exercise of consideration will not evaporate because of untimely death which is a fortuitous circumstance so as to result in any advantage to the State."

12. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is quite evident that although petitioner's late father was appointed on ad hoc basis in a substantive vacancy but the aforesaid appointment was thereafter accorded approval by the concerned authority and he continued on the basis of such approval upto the date of his demise. It is also evident that the case of the deceased was under active consideration for regularization under statutory terms.

13. It is quite evident that the entitlement for compassionate appointment to the petitioners accrues from Regulation 103 of the regulations which is as follows:-

"103. इस विनियमावली में दी गई किसी बात के होते हुए भी जहाँ किसी मान्यता प्राप्त, सहायता प्राप्त संस्था का अध्यापक या शिक्षणेत्तर कर्मचारी वर्ग के किसी कर्मचारी की, जो विहित प्रक्रिया के अनुसार नियुक्त किया गया हो, सेवा काल में मृत्यु हो जाये, तो उसके कुटुम्ब के एक सदस्य को, जो 18 वर्ष से कम आयु का न हो, प्रशिक्षित स्नातक की श्रेणी में अध्यापक के पद रूप में या किसी शिक्षणेत्तर पद पर, यदि वह पद के लिये विहित अपेक्षित शैक्षिक प्रशिक्षण अर्हताये, यदि कोई हों, रखता हो और नियुक्ति के लिये अन्यथा उपयुक्त हो, नियुक्त किया जा सकता है:

स्पष्टीकरण- इस विनियम के प्रयोजनार्थ "कुटुम्ब का सदस्य" का तात्पर्य मृत कर्मचारी की विधवा/विधुर, पुत्र, अविवाहित या विधवा पुत्री से होगा।

टिप्पणी- यह विनियम और विनियम 104 से 107 तक उन मृत कर्मचारियों के संबंध में लागू होंगे जिनकी मृत्यु 1 जनवरी, 1981 को या उसके पश्चात् हुई हो।"

14. A perusal of aforesaid regulation clearly indicates that there is no distinction carved out with regard to any teacher who passes away during service while working either substantively

or temporarily. The only aspect required to be considered is that the teacher or non-teaching staff should have been appointed in accordance with the procedure prescribed and has passed away during service. It is relevant to indicate that Regulation 103 of the regulations commences with a non obstante clause and would therefore have primacy over any other regulation.

15. The aforesaid aspect has already been considered by Coordinate Bench of this Court in the case of **Smt. Preeti Sharma** (supra) in which also the deceased teacher had been appointed on a short-term basis in accordance with paragraph 2 of the U.P. Secondary Education Services Commission (Removal of Difficulties) (II) Order 1981 which subsequently became substantive in nature. In the said case also the deceased was appointed and subsequently passed away without regularization and claim for compassionate appointment was rejected only on the ground that since he had not been regularized in service, no claim for compassionate appointment would accrue.

16. After examining provisions of Regulation 103 to 107 of the Regulations framed under the Intermediate Education Act, 1921, the Court observed as follows:-

"13. To the understanding of this Court, what Regulation 103 envisages is the appointment of the deceased teacher or Class III employee made in accordance with Rules prescribed; it does not speak about the appointment being substantive, or, more particularly, permanent. A temporary employee can also be appointed and, in fact, ought to be appointed in accordance with the Rules prescribed against a substantive post. The position would be different, if the post against which the employee is appointed, in accordance with Rules prescribed, is not substantive, but a temporary vacancy, where the some regular incumbent holds lien. If that were the case, a temporary or stop-gap appointment of an incumbent on a post that is temporary in nature, may not be within the scope of Regulation 103, affording the dependent of a teacher or employee appointed against a temporary vacancy, to claim compassionate appointment. Therefore, on the plain terms of the Statute, it is evident that where an employee is appointed according to the Rules prescribed against a vacancy that is substantive, and dies in harness, his dependents would be entitled to apply under Regulation 103. It would be reading something more into the Statute to infer that the employee or teacher also ought to be substantively appointed or on a permanent tenure. If that were the intention of the Statute, words to that effect would have been employed, and not ones that fall short of requiring the deceased employee to be permanently or substantively appointed.

22. Here, there is no quarrel that there was a regular vacancy to begin with, albeit short-term, against which the petitioner's late husband was appointed in accordance with the Rules. He was appointed, to be emphasized, in accordance with Paragraph 2 of the

Removal of Difficulties (Second) Order. That he was so appointed, is a fact, which the DIOS has acknowledged in his order dated 13.05.1996, granting financial approval to the appointment. He was then permitted by the State Government, upon the vacancy turning permanent, to continue till a regularly selected candidate by the Commission/Board joined. The petitioner's husband died in harness, while continuing on those terms. It cannot, therefore, be said that the appointment of the petitioner's husband was one not made in accordance with the Rules prescribed, as envisaged under Regulation 103 of Chapter III of the Regulations framed under the Act of 1921. It is, by no means, an appointment dehors the Rules. Also, it is an appointment against a substantive vacancy, though not one that conferred a permanent tenure upon petitioner's deceased husband. It is also not the respondent's case that the appointment of the petitioner's deceased husband was one not made in accordance with the Rules prescribed. That is not the case urged either in the impugned order or the stand taken before this Court in the counter affidavit. All that the respondents say, to deny appointment to the petitioner, is that her husband was not appointed in a substantive capacity to the post that is admittedly substantive. They do not say that he was not appointed in accordance with the Rules prescribed.

23. In the opinion of this Court, therefore, the petitioner's case makes her eligible for a consideration of her candidature for compassionate appointment under Regulations 103 - 107 of Chapter III of the Regulations framed under the Act of 1921. This being the position under the law, equity also requires the petitioner's case to be considered. This is so because the petitioner's husband served the College continuously from 1995 to 2012, until he died. In case he had continued in service, possibly, he would have been considered for substantive appointment and granted one in terms of Section 16G of the Act of 1982, which came into force w.e.f. 22.03.2016. His untimely death cut short that possibility. No doubt, this does not create a legal right in favour of the petitioner to receive a consideration of her candidature on that ground, but that legal right is established under the terms of Regulation 103, as already said."

17. Upon applicability of the aforesaid judgment in the present facts and circumstances of the case, it is quite evident that the same is squarely applicable in the present issue as well since in the present case also the deceased employee had passed away prior to being regularized in service. In the present case also the impugned order does not state anywhere that appointment of deceased teacher was illegal in any manner. On the contrary it has clearly narrated the fact that the deceased was employed in a substantive vacancy by the Committee of Management and was in receipt of salary till the date of his demise.

18. A perusal of Regulation 103 does not indicate any requirement of the appointment being substantive or permanent in nature. Clearly it would be a different matter in case the persons so appointed even though in accordance with rules is not on a substantive but a temporary vacancy where some regular incumbent holds lien. Such an exception is not applicable in the present facts and circumstances where the vacancy and the post themselves were substantive in nature

without any lien reposing in any other person.

19. In view of discussion made hereinabove, it is quite evident that appointment of the deceased was in terms indicated under Regulation 103 of the regulations and therefore petitioners would have a right to be considered for compassionate appointment in lieu thereof.

20. Aforesaid aspect is also discernible from a perusal of impugned order itself which clearly indicates the fact that regularization of the deceased was under active consideration as on the date of his demise.

21. This Court is of the considered opinion that once the opposite parties themselves admit that the deceased was entitled for being considered for regularization in terms of statutory provisions, the mere fact of fortuitous circumstance of his demise prior thereto cannot be a hindrance in the claim of petitioner for compassionate appointment.

22. The aforesaid case-laws are clearly applicable in the present facts and circumstances due to which impugned order/Minutes of Meeting dated 07.02.2022 is unsustainable and is hereby quashed by issuance of a writ in nature of Certiorari. A further writ in the nature of mandamus is issued commanding opposite party no.3 i.e. District Inspector of Schools, Pratapgarh or any other competent authority to reconsider petitioners' case for compassionate appointment keeping in view that they are entitled for the same in terms of Regulation 103 of the regulations framed under the Intermediate Education Act, 1921. Such consideration shall take place with final decision being accorded within a period of eight weeks from the date a certified copy of this order is produced before the concerned authority.

23. Resultantly, the petition succeeds and is **allowed**. There

shall be no order as to costs.

Order Date :- 11.3.2024

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